IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. NO. 3072 OF 2003

Date of Decision: May 14, 2007

Ved Parkash

…Petitioner

Versus

The State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. P.K. Goklaney, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for the respondents.

JUDGMENT

M. M. KUMAR, J.

The prayer in this petition filed under Article 226 of the Constitution is for issuance of direction to the respondents to retire the petitioner at the age of 60 years by applying the instructions issued by the respondent State under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity, 'the Act').

The petitioner was appointed as a JBT Teacher on 31.10.1997 in a privately managed aided school-respondent No. 4. He was promoted to the post of S.S. Master. He attained the age of superannuation on 30.6.2003 on completion of 58 years of age. It is claimed that the case of the petitioner for raising the age of retirement is covered by the instructions dated 17.1.2001 as the petitioner has more than 40% disability and is covered by the definition of 'disability' as defined in Section 2(i)(o) and (t) of the Act. The whole case of the petitioner is that once the instructions dated 17.1.2001 grants two years more service to blind government employees then there is no reason for the respondent State to exclude the petitioner, who has 40% disability, from granting the benefit of two years additional service. The instructions dated 17.1.2001 reads as under:-

> "Sub: Raising of age of Blind Government Employees from 58 years to 60 years.
>
> Sir/Madam,
>
> I am directed to invite your attention to the circular letter No. 9/6/94-3PP-II/5598, dated 16th March, 1995 on the subject noted above vide which the retirement age of the Blind State Government Employees has been raised from 58 years to 60 years, subject to their being declared physically and mentally fit for further service after the age of 58 years by the Civil Surgeon of the Distt. Concerned.
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> 2. The Government has reconsidered the matter in

view of the demand of the Blind Government Employees and it has been decided that for Blind Government Employees , there should be no medical check-up after the age of 58 years. However, where Blind Government Employee is adjudged mentally or physically un-suitable for performing the duties of the post being held by him only he may be referred for medical check-up. Heads of Departments/Heads of Offices should ensure this personally.

3. Necessary amendments to the relevant rules in the Punjab Civil Services Rules will be carried out in due course by the Department of Finance.

4. The receipt of this letter may please be acknowledged."

The stand of the respondents in the written statement is that the petitioner cannot claim any benefit under the provisions of the Act with regard to age of retirement as there is no provision to that effect. It has further been asserted that the instructions dated 17.1.2001 go back to the earlier instructions dated 1.8.1977 when blind employees of the State Government were given extended period of retirement at the age of 60 years. Similar instructions were reiterated on 16.3.1995, subject to the condition that after completion of age of 58 they are declared physically and mentally fit by the Civil Surgeon of the district. It is, thus, claimed that the policy instructions of the Punjab Government do not emanate from the provisions of the

Act and in any case there is no provision in the Act dealing with grant of benefit in the age of superannuation.

Having heard learned counsel for the parties at some length, we are of the view that the petitioner cannot claim that he should be retired at the age of 60 years in the manner a blind person is retired by virtue of instructions dated 1.8.1977, 16.3.1995 and 17.1.2001. The aforementioned instructions are firstly not applicable to the case of the petitioner who is admittedly an employee of privately recognized aided school-respondent No. 4. His conditions of service are governed by the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979. Moreover, we find that there is no provision in the Act dealing with the age of retirement of disabled persons assuming that the petitioner is a person with disability as per the definition given in Section 2(i)(o)(t) of the Act. In any case, the petitioner cannot claim equality with a blind person who belongs entirely to a different category. Both the petitioner and a blind person cannot put at one pedestal for the purposes of granting benefit in extension of age of superannuation. The writ petition is wholly devoid of merit and the same is liable to be dismissed.

For the reasons above mentioned, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 14, 2007
Pkapoor